

EDWARD P. MURPHY

IBLA 80-346

Decided June 16, 1980

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring abandoned and void the Papoose #1 lode mining claim N-MC 138798.

Affirmed.

1. Federal Land Policy and Management Act of 1976:  
Recordation of Affidavit of Assessment Work or Notice  
of Intention to Hold Mining Claim

The owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. A mining claimant who chooses the Postal Service as his means of delivery must accept the responsibility and bear the consequences of loss or untimely delivery of his filings.

APPEARANCES: Edward P. Murphy, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Edward P. Murphy appeals from the November 23, 1979, decision of the Nevada State Office, Bureau of Land Management (BLM), which rejected his filings for the Papoose #1 lode mining claim, located in August 1972, for the reason that the maps and proof of labor submitted by appellant were not received on or before October 22, 1979. The tendered material and service fee were returned to Murphy.

The decision stated: "The regulations in 43 CFR 3833.4(a) further provide that the failure to file such instruments as are required by section 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \* and it shall be void."

Appellant states only that he mailed his filings in adequate time for delivery to the Nevada State Office on or before October 22, 1979. The record does not contain the envelope utilized, but credence may be given to the allegation as the record indicates the service fee for this filing was tendered by a check dated October 17, 1979.

The owner of an unpatented mining claim located on public land prior to October 21, 1976, had until October 22, 1979, to record the location. Sec. 314(b), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.1-2(a). The recordation is effected only by filing the appropriate copies of the official record of the location with the proper BLM office. 43 CFR 3833.1-2(a). Payment of service fee of \$5 per claim is mandatory. 43 CFR 3833.1-2(b). The statute also requires that evidence of annual assessment work or a notice of intention to hold such unpatented mining claim must also be filed on or before October 22, 1979, or on or before December 30 of the calendar year following the calendar year in which the notice of location was recorded with BLM, whichever date is sooner.

Failure to comply with the regulations governing recordation of information relative to unpatented mining claims must result in a conclusive finding that the claim has been abandoned. Section 314(c), FLPMA, 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a); G. H. Monk, 47 IBLA 213 (1980); Walter T. Paul, 43 IBLA 119 (1979).

The Board has repeatedly held that a mining claimant, having chosen a means of delivery the Postal Service, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining and Manufacturing Assn., 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

Douglas E. Henriques  
Administrative Judge

We concur:

---

James L. Burski  
Administrative Judge

---

Edward W. Stuebing  
Administrative Judge

